

**UNITED STATES DISTRICT COURT OF THE  
EASTERN DISTRICT OF PENNSYLVANIA**

JEAN KILGORE, AS EXECUTRIX OF THE  
ESTATE OF VICTOR B. KILGORE, AND IN  
HER OWN RIGHT,

Vs.

GEORGIA-PACIFIC LLC, et. al.

MDL Docket No. 875

Civil Action No. 2:13-CV-04029-ER

ASBESTOS CASE

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of \_\_\_\_\_, 2014, upon consideration of the Motion for Summary Judgment filed by Defendant Georgia-Pacific LLC, and any opposition thereto, it is **ORDERED** that the Motion is **GRANTED** and the Plaintiff's claims against Georgia-Pacific LLC are dismissed with prejudice.

**BY THE COURT:**

\_\_\_\_\_  
Eduardo C. Robreno, U.S.D.J.

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**REPLY IN SUPPORT OF DEFENDANT GEORGIA-PACIFIC LLC’S MOTION  
FOR SUMMARY JUDGMENT**

Defendant Georgia-Pacific LLC, by and through undersigned counsel, hereby files this Reply in Support of its Motion for Summary Judgment on the grounds that Plaintiff has failed to present any evidence to create a genuine issue of material fact as to Georgia-Pacific LLC’s alleged liability in this case.

In her opposition, Plaintiff attempts to supplement the deficiencies in her evidence with speculation. Plaintiff’s counsel’s hypothesis that “[i]t will not be surprising if, in a large facility like Aberdeen, that old stockpiled GP asbestos joint compound would be used after 1977” is not evidence, and does not create an issue of fact. Indeed, the Superior Court of Pennsylvania recently rejected this very same “stockpile” theory, stating, “While we agree that this theory is possible, such speculation is insufficient to establish that Decedent was exposed to asbestos-containing products manufactured by Georgia-Pacific.” Krauss v. Trane U.S., Inc., et al., 2014 Pa. Super. LEXIS 3938, \*55 (Oct. 22, 2014).

Plaintiff’s opposition also ignores the plain testimony of record. The decedent

clearly stated he did not do anything to the Georgia-Pacific roof coating after it dried, and he did not recall removing it. Exhibit A at 300:11-18; Exhibit B at 93:19-94:7. Plaintiff's witness James Miller could only testify to Georgia-Pacific joint compound use after 1979, which was well after Georgia-Pacific products were no longer made with asbestos. Exhibit C at 14:18-22; 16:7-23. Plaintiff's attempts to extrapolate favorable theories with no supporting evidence is not the illustration of a genuine issue of material fact, but an invitation to this Court, and by extension the jury, to guess or speculate. Such speculation should not be permitted.

There are four prongs in the standard: 1) fibers shed; 2) inhalation of fibers; 3) fibers containing asbestos; and 4) asbestos fibers came from the specific manufacturer. See Gilbert v. Monsey Products Co., et al., 2004 Pa. Super. 380; 2004 Pa. Super. LEXIS 3362 (Pa. Super. 2004). Plaintiff cannot merely focus on one of the four prongs, as all are necessary to survive summary judgment. When one prong fails, a defendant's motion for summary judgment should be granted.

For all of the foregoing reasons and in the absence of any factual issues for trial and as a matter of law, Defendant Georgia-Pacific LLC, respectfully requests that this Honorable Court grant its Motion for Summary Judgment and enter judgment in their favor and against Plaintiff and co-defendants in the proposed form of Order attached hereto.

Respectfully submitted this 5<sup>th</sup> day of November, 2014,

BY: /s/ Kevin J. O'Brien KJ4408  
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Attorneys for Defendant, Georgia-Pacific LLC

**CERTIFICATE OF SERVICE**

I, KEVIN J. O'BRIEN, hereby certify that on this 5th day of November, 2014, I caused the foregoing REPLY IN SUPPORT OF GEORGIA-PACIFIC LLC'S MOTION FOR SUMMARY JUDGMENT to be filed with the Court electronically via ECF system and is available for viewing and downloading from the ECF system, and a true and correct copy to be served to Plaintiffs' counsel and all defense counsel via electronic service-ECF system.

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